

The issue is whether the Office properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On October 24, 2001 appellant, then a 39-year-old modified clerk, filed an occupational disease claim alleging that her right shoulder impingement syndrome, C8-T1 radiculopathy, cervical strain, and carpal tunnel syndrome were causally related to factors of her federal employment which included being exposed to cold air vents and working outside her restrictions.¹ Appellant indicated that she realized the disease was caused or aggravated by her employment on February 1, 2001. Appellant stopped work on January 31, 2001 and returned on January 21, 2002.

By letter dated January 24, 2002, the Office advised appellant that additional factual and medical evidence was needed. The Office accepted that appellant was exposed to cold air vents; however, it advised appellant that she failed to establish that she was forced to work outside her restrictions. Appellant was requested to describe in detail how the injury occurred and to provide dates of examination and treatment, a history of injury given by her to a physician, a detailed description of any findings, the results of all x-rays and laboratory tests, a diagnosis and course of treatment followed and a physician's opinion supported by a medical explanation as to how the reported work incident caused the claimed injury. The Office explained that the physician's opinion was crucial to her claim and allotted appellant 30 days within which to submit the requested information.

Appellant submitted additional evidence comprised of several prescription slips, diagnostic tests dated April 8, 1997 and August 27, 2001, along with reports from Dr. Shahan K. Sarrafian, a Board-certified orthopedic surgeon and Arthur Nizam, a Board-certified internist. In his July 24, 2001 report, Dr. Sarrafian explained that appellant's "carpal tunnel syndrome is job related whereas the impingement syndrome is not." Dr. Nizam, in his February 11, 2002 report, advised that the reports were conflicting with regard to the carpal tunnel syndrome and indicated that any exposure to cold air aggravated her pain. Appellant also included a narrative describing the factors and conditions which she believed contributed to her condition.

By decision dated March 8, 2002, the Office denied appellant's claim as the medical evidence was insufficient to establish that her condition was caused or aggravated by her employment.

Appellant requested a review of the written record on March 12, 2002.

She submitted copies of previously submitted reports. Additionally, she provided an April 14, 2001 report in which Dr. Sarrafian diagnosed impingement syndrome and right carpal tunnel syndrome, and an April 6, 2001 magnetic resonance imaging (MRI) scan of the right shoulder.

¹ The record reflects that appellant had an accepted claim for right carpal tunnel syndrome, cervical strain and right tendinitis under File No. 10-0399229. Appellant initially filed her claim as a recurrence; however, the case was remanded by the Office hearing representative in a December 14, 2001 decision to be adjudicated as a new occupational disease claim.

By decision dated May 29, 2002, the Office hearing representative affirmed the March 8, 2002 decision.

Appellant requested reconsideration on May 23, 2003. She alleged that the denial of her claim was for an accepted condition, that her absences showed her condition was worsening, that she had not received her ergonomic equipment, that pictures showed the condition of her work area, and that her restrictions were violated on a nightly basis. She also included copies of her application for postal workers' benefits.

By decision dated July 14, 2003, the Office denied appellant's request for reconsideration without a review of the merits on the grounds that her request neither raised substantial legal questions nor included new and relevant evidence. The Office determined that the evidence was immaterial in nature and thus, it was insufficient to warrant review of its prior decision.

LEGAL PRECEDENT

Under section 8128(a) of the Federal Employees' Compensation Act,² the Office may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

“(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by the Office; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by the [the Office].”³

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.⁴

ANALYSIS

Appellant disagreed with the denial of her claim for right shoulder impingement, C8-T1 radiculopathy, cervical strain and carpal tunnel syndrome and requested reconsideration.

In support of her request, she submitted several arguments in which she alleged that her conditions were caused or aggravated by her federal employment. However, these arguments

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b).

⁴ 20 C.F.R. § 10.608(b).

would not be relevant to the issue of the present case, *i.e.*, whether appellant's C8-T1 radiculopathy, cervical strain and carpal tunnel syndrome were caused or aggravated by factors of her federal employment. The underlying issue is medical in nature and should be resolved by the submission of medical evidence. Appellant did not submit any medical reports. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁵

Consequently, the evidence submitted by appellant on reconsideration does not satisfy the third criterion, noted above, for reopening a claim for merit review. Furthermore, appellant also has not shown that the Office erroneously applied or interpreted a specific point of law, or advanced a relevant new argument not previously submitted. Therefore, the Office properly denied her request for reconsideration.

CONCLUSION

The Board finds that the Office of Workers' Compensation Program properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 14, 2003 is affirmed.

Issued: October 7, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

⁵ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).